

Utah Solid and Hazardous Waste Control Board Meeting  
Utah Department of Environmental Quality  
195 North 1950 West (Conference Room #1015) SLC, Utah  
June 12, 2014  
1:30 p.m.

**Board Members Present:** Dennis Riding (Vice Chair), Jeff Coombs, Marc Franc, Brett Mickelson, Amanda Smith, Shane Whitney and Dwayne Woolley

**Board Members Absent:** Gene Cole and Kevin Murray (Chair)

**Staff:** Scott Anderson, Therron Blatter, Gary Astin, Thomas Ball, Ed Costomiris, Otis Willoughby, Don Verbica, Deborah Ng, Raymond Wixom, Ralph Bohn, Tina Mercer, Arlene Lovato, Elisa Smith and Doug Hansen

**Others:** Vern Rogers, David Gibby, Dean Conner, Bill Mix, Jose Becerrer, Tim Orton, Lonnie Brown, Les Ashwood, Jeff Schmidt, Tim Orton, Sheila Vance, Gary McCloskey, Trace Salmon, Sean McClatchey, Lon Griffith and Brett Stephens

**I. Call to Order.**

Dennis Riding (Vice-Chair) called the meeting to order at 1:31 p.m. Gene Cole and Kevin Murray were excused from the meeting.

**II. Approval of the Meeting Minutes for the April 24, 2014 Board Meeting.**

**It was moved by Dwayne Woolley and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to approve the April 24, 2014 Board Meeting minutes.**

**III. Underground Storage Tanks Update.**

Therron Blatter informed the Board that the preliminary cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of May 2014 was approximately 11.5 million dollars. The balance has increased approximately one hundred thousand dollars since April 2014. Therron also indicated that House Bill (HB) 138 requires the balance of the PST Loan Fund, which is approximately six million dollars, to be transferred into the PST Trust Fund. This transfer will take place prior to the next Board meeting. Loans will continue to be made from the PST Trust Fund.

HB138 changed the interest rate on loans from the PST Trust Fund to zero percent interest. The hope is that this will encourage facilities to upgrade substandard equipment. In the next several Board meetings, the Division of Environmental Response and Remediation (DERR) will be bringing several items before the Board for consideration due to rule changes made necessary by the passing of HB138.

Mr. Riding asked if the funds for the PST Loan Fund originally came from the PST Fund. Mr. Blatter confirmed that they did.

**IV. Proposed changes to the R311, Underground Storage Tank Rules (Information Item Only).**

Gary Astin and Doug Hansen informed the Board that HB138 makes several changes to the Underground Storage Tank (UST) program. Rule changes will be proposed in upcoming meetings to

implement these changes. The following proposed changes will require Board approval at a subsequent board meeting for formal rule making and a 30-day public comment period. These proposed rule changes have been discussed with the UST Advisory Task Force and will be made available for informal stakeholder comment prior to the official public comment period. These changes are:

**R311-201-12, UST Operator Training and Registration**

Adds certified testers to a list of certified individuals qualified to become third-party class B operators, adopts an updated monthly operator inspection form and clarifies the requirement to have an automatic shutoff device at unmanned fueling locations.

**R311-204-3, Disposal**

Simplifies labeling requirements of removed USTs by reducing what must be written on tanks.

**R311-206-11 Environmental Assurance Fee Rebate Program**

Creates a mechanism to rebate a portion of the Environmental Assurance Fee assessed to facilities that participate in the Environmental Assurance Program (PST Fund). This is required by HB138.

**R311-209-4, Recovery of Oversight Costs from Non-PST Fund Covered Releases**

Clarifies who may be exempted from paying oversight costs on non-PST covered releases.

**R311-212, Administration of the Petroleum Storage Tank Loan Fund**

Removes references to "Loan Fund," clarifies the portion of PST Funds available for loans (212-2), adopt updated loan documents (212-10) and changes citation references.

An example of the proposed changes and a potential schedule for the changes were included in the Board packet.

Dwayne Woolley asked if cancelled Board meetings would affect the timeline for the proposed rule changes. Mr. Astin stated that, assuming the Board meets in either July or August, the changes should be able to move forward as planned. The rule changes need to be submitted to administrative rules by November of this year.

Dennis Riding stated that these changes are due to HB138 sponsored by Representative Eliason.

Mr. Riding said that this bill is a good thing and Representative Eliason deserves recognition. He then asked Doug Hansen to explain risk profiling of USTs.

Mr. Hansen explained that approximately three years ago, the UST program began evaluating tank risk and using that information to prioritize inspections. A risk tool was developed to perform these evaluations. Each facility has been assigned a high, medium or low risk.

Representative Eliason questioned why facilities with high-risk tanks were paying the same amount for insurance as the facilities with low-risk tanks. Risk factors have been limited to equipment for the Environmental Assurance Fee Rebate Program. Environmental factors have not been included in the assessment. Double wall tanks and double wall piping, along with non-corrodible piping all reduce risk and are upgrades that would ensure a higher rebate. The risk formulas presented in the Board packet came directly from the risk-profiling tool.

**V. Approval to proceed with formal rulemaking and 30-day public comment period for proposed changes to the Hazardous Waste Rules, R315-1-1 and R315-2-4 (Board Action Item).**

Ralph Bohn, Manager, Planning and Technical Support Section, provided some history on these rules. At the March 13, 2014 Board meeting, the Board gave its approval to proceed with formal rulemaking and a 30-day public comment period for proposed changes to Hazardous Waste Rules, R315-1-1 and R315-2-4. The intent was to request final adoption of the proposed changes to the Hazardous Waste Rules, R315-1-1 and R315-2-4 at today's meeting. However, because of concerns regarding adequate notice to all stakeholders, the Division is requesting Board approval to initiate a second formal rulemaking and 30-day public comment period for proposed changes to Hazardous Waste Rules, R315-1-1 and R315-2-4. To date, no comments have been received regarding the proposed rule changes. No changes have been made to the Hazardous Waste Rules, R315-1-1 and R315-2-4 that the Board received in their March 13, 2014 Board packet.

**It was moved by Jeff Coombs and seconded by Shane Whitney and UNANIMOUSLY CARRIED to proceed with formal rulemaking and a 30-day public comment period for proposed changes to the Hazardous Waste Rules, R315-1-1 and R315-2-4.**

**VI. Approval to proceed with formal rulemaking and 30-day public comment period for proposed changes to the Standards for Management of Used Oil Rule, R315-15 (Board Action Item).**

Ralph Bohn, Manager, Planning and Technical Support Section, provided some history on these rules. At the March 13, 2014 Board meeting, the Board gave its approval to proceed with formal rulemaking and a 30-day public comment period for proposed changes to the Standards for Management of Used Oil Rule, R315-15. The intent was to request final adoption of the proposed changes to the Standards for Management of Used Oil Rule, R315-15 at today's meeting. However, because of concerns regarding adequate notice to all stakeholders, the Division is requesting Board approval to initiate a second formal rulemaking and 30-day public comment period for proposed changes to the Standards for Management of Used Oil Rule, R315-15.

This rule has additional changes from the original proposed rule the Board received in their March 13, 2014 Board packet. All proposed changes were provided to the Board via email titled "Summary of changes to the Used Oil Rules Utah Administrative Code, R315-15." (A copy is available with the meeting minutes.) To date, no comments have been received regarding the proposed rule changes.

**It was moved by Marc Franc and seconded by Dwayne Woolley and UNANIMOUSLY CARRIED to proceed with formal rulemaking and a 30-day public comment period for proposed changes to the Standards for Management of Used Oil Rule, R315-15.**

**VII. Hazardous Waste Section.**

**A. ITT Exelis request for a variance from hazardous waste storage requirements (Information Item Only)**

Ed Costomiris, Environmental Scientist, Hazardous Waste Section, informed the Board that Exelis has requested a variance from the Hazardous Waste Management Rules to store ignitable waste within 50 feet of the property line, which is not allowed by R315-7-16.6 of the Utah Administrative Code. Ed clarified that the name listed on the Executive Summary provided to the Board in the June 12, 2014 Board packet is incorrectly listed as ITT Exelis/EDO Western. For clarification, the correct name of the facility is EDO Western dba Exelis.

Exelis is located at 2645 South 300 West, Salt Lake City, Utah. The facility previously stored hazardous waste in an area more than 50 feet from its property line. The former hazardous waste storage area's function was changed and two new storage areas were established. These new storage areas are within 50 feet of the property line and one stores ignitable hazardous waste. (The new 90-day storage areas border 220 West on the east edge of the facility property. This is a public road that dead ends in property leased by Exelis). Exelis also leases the property on the east side of 220 West (north of 2700 South) in Salt Lake City, Utah. The new storage areas have fire suppression systems. The South Salt Lake Fire Department Fire Marshall has inspected the new storage areas and indicated in correspondence to the Director that, due to minimal public access, a variance was acceptable with his department. (A copy of this letter was provided to the Board in their June 12, 2014 Board packet.)

A notice for public comment was published on June 10, 2014 in the Salt Lake Tribune and the Deseret News. The comment period began on June 10, 2014 and will conclude on July 10, 2014. This is an informational item. The Director will make a formal recommendation to the Board at the next meeting. The variance request will be good for one year.

Bill Mix, Exelis Representative, stated that Exelis plans on relocating the 90-day storage areas and he anticipates the cost estimate to be approximately 100K to make the necessary changes. Exelis intends to purchase a flammable storage shed in 2015. Because the purchase will be a capital expenditure to his company, the costs need to be included in next year's budget. Mr. Mix is currently looking into a pre-manufactured, self-contained unit to purchase. This will allow flexibility, if they ever relocate, to take all the units with them. These units also have secondary containment, fire-suppression, etc. One unit would be for the flammable materials they store and the second unit would be used for the corrosive materials storage.

Marc Franc asked if other options for storage at the facility have been considered that comply with the current rules. Mr. Mix has looked at other options, but the only other option would be the middle of their parking lot, which is not feasible. Two other locations have been identified as possible options: the first location is adjacent to their current warehouse, which is located at 220 West 2700 South. This option is based on whether the landlord would allow them to store the materials at this site. The second location is at their manufacturing facility where they are currently storing material having previously received approval from the landlord to store materials at this location. Mr. Mix reiterated that, at this time, there is no feasible location to store the material that meets the 50 feet rule.

**B. EnergySolutions request for a variance from hazardous waste rules regarding treatment in a landfill cell (Information Item Only)**

Otis Willoughby, Environmental Scientist, Hazardous Waste Section, informed the Board that EnergySolutions LLC has requested a variance from the Hazardous Waste Management Rules regarding its in-cell macroencapsulation process. EnergySolutions seeks authorization to continue to follow its current permit conditions. This variance would be allowed for one year.

EnergySolutions proposes to continue managing debris waste streams in accordance with Attachment II-1-5, Macroencapsulation Plan. EnergySolutions currently places mixed waste debris in the landfill cell and encapsulates it in a proprietary concrete material. Treatment is completed within 24 hours of waste placement. This encapsulation prevents leaching of hazardous constituents into the environment.

EnergySolutions deems this variance necessary due to a recent interpretive memorandum by the USEPA. In this memorandum, dated April 11, 2014, the USEPA outlines its interpretation of the Land

Disposal Restrictions (LDR) and takes the position that the act of placing a waste into a cell prior to, or as a step of treatment, violates the LDR standards.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele Transcript Bulletin. The comment period began May 29, 2014 and will end June 27, 2014. This is an informational item. A recommendation will be made in a future Board meeting.

Don Verbica informed the Board that years ago the USEPA promulgated rules regarding LDR. The rules required waste to be treated and meet certain standards before it could be land disposed. In the early 1990's, the Division requested clarification from USEPA whether a practice similar to EnergySolutions would be allowable. The Division did not receive a response to that request. However, the Division recently received a memo from the USEPA indicating that all waste must meet LDR before it is placed in the landfill cell.

The Division believes that EnergySolutions' procedures are environmentally sound and have approved their practices in the permits issued by the Director. The Division is now working with the USEPA on their concerns regarding LDR. In the interim, EnergySolutions is requesting a variance from the rule to ensure that the rule does not conflict with the permit, i.e., the permit allows them to do it and the variance in place for one year will allow the Division to work with the USEPA to resolve this issue. EnergySolutions may also opt to apply for a No Migration Petition, demonstrating that none of the waste will be released. Don explained that the material EnergySolutions is dealing with is materials that are containerized or pieces of debris.

Dennis Riding stated that it sounds like there is conflict between USEPA's expectations and what the permit states.

Dwayne Woolley asked why this issue was not identified when the permit was issued. Don explained that the Division requested clarification from the USEPA in 1991 and did not receive a response until 2014. Absent a response, the Division assumed that the USEPA approved of the practices conducted at EnergySolutions.

Scott Anderson clarified that each time EnergySolutions permit was renewed, the USEPA reviewed the permit, provided comments and approved of its conditions. This issue was never brought up, until now.

Tim Orton, EnergySolutions Representative, provided a history of the macroencapsulation process. Mr. Orton stated that EnergySolutions' goal is to be as regulatory compliant as possible and strives to be proactive, which is why the company is seeking a variance. Mr. Orton stated that other facilities throughout the United States utilize the macroencapsulation process. (Mr. Orton provided a presentation on Macroencapsulation. A copy of the presentation is available with the meeting minutes.)

Don Verbica clarified that USEPA does not allow delegation of the rules regarding "No Migration Petitions" and EnergySolutions would need to work with USEPA Region VIII if they submitted one.

Dennis Riding asked if the cement ever cracks. Mr. Orton stated that the cement has cracked, but very few instances of cracking have occurred.

**C. Clean Harbors Grassy Mountain request for a site-specific treatment variance for waste code D009 (Mercury) (Board Action Item)**

**Shane Whitney recused himself from this agenda item.**

Ed Costomiris, Environmental Scientist, Hazardous Waste Section, informed the Board that Clean Harbors Grassy Mountain, LLC has requested a site-specific treatment variance from the Utah Hazardous Waste Management Rules. The Grassy Mountain Facility seeks authorization to stabilize a waste stream containing mercury and residue from the demilitarization, treatment and testing of nerve and chemical agents. The treated waste will be disposed in a hazardous waste cell at the facility.

The Grassy Mountain Facility proposes to stabilize and dispose of a carbon filter media from the air pollution control system from the Chemical Demilitarization Incinerator at the Deseret Chemical Depot (now Tooele Army Depot South) which is currently undergoing closure. The waste is a characteristic hazardous waste due to its mercury content (D009). It is also defined as a hazardous waste in Utah because it has been contaminated with nerve agent (F999). The technology-based treatment code for this waste is RMERC (roasting/retorting followed by recovery). The RMERC process generates secondary waste streams. Secondary waste streams, when greater than or equal to 260 mg/kg total mercury, are required to be further stabilized to a level of 0.20 mg/l using the toxicity characteristic leaching procedure (TCLP). Secondary waste streams, when less than 260 mg/kg total mercury, are required to be treated to 0.025 mg/l TCLP. The Grassy Mountain Facility proposes to treat all of the waste to the more restrictive level of 0.025 mg/L, or less, based on the TCLP.

The waste will be treated directly with a stabilization method rather than going through the initial retorting or roasting of the waste. Due to the F999 waste code, the retorting company will not accept the waste for processing. The hardship for Grassy Mountain and Tooele Army Depot South is that there is currently no alternative to treat and dispose of this waste. The Grassy Mountain Facility has conducted a treatability study on the waste stream. The treatment formula developed for this waste stream resulted in mercury concentrations below the concentration of 0.025 mg/L TCLP. This is more stringent than the high mercury subcategory requirement and meets the standard for Low Mercury – Subcategory Inorganic. In addition, LDR compliance will be met for all other waste codes associated with the waste prior to disposal. This variance, if granted, will be valid until June 12, 2015.

A notice for public comment was published on April 29, 2014 in the Salt Lake Tribune, Deseret Morning News and Tooele Transcript Bulletin. The comment period began on April 29, 2014, and concluded on May 29, 2014. A public hearing was conducted on May 14, 2014. No comments were received.

The Grassy Mountain Facility has requested similar site-specific treatment variances for High Mercury. The Board approved the last request in June 2013. The Director recommends approval of the site-specific treatment variance.

**It was moved by Mark Franc and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to approve Clean Harbors Grassy Mountain request for a site-specific treatment variance for waste code D009 (Mercury).**

**VIII. Open and Public Meetings Act, Utah Public Officers and Employees Ethics Act.**

Raymond Wixom, Attorney General's Office, informed the Board that the Open and Public Meetings Act requires that Board members receive annual training on the requirements of the Act. Mr. Wixom

reviewed the requirements of the Open and Public Meeting Act. The purpose and intent of the Open and Public Meetings Act is to ensure that the actions of the State are conducted openly and that the Board's business is done in full view of the public. Mr. Wixom stated that Scott Anderson, Director of the Division of Solid and Hazardous Waste ensures that the definitions and requirements of the Open and Public Meetings Act are carried out by his staff.

It was clarified that changes to the Open Public Meetings Act in 2013 included a bill that was passed which requires that "pending" minutes be made available to the public within 30 days of the meeting.

Mr. Wixom reviewed the requirements of the Ethics Act. Mr. Wixom reminded the Board that on March 27, 2013, Craig Anderson, Attorney General's Office, provided to the Board a detailed handout regarding the Open and Public Meetings Act and Ethics Act that contains relative information they need to review. Scott Anderson requested the Board receive this handout again. (This handout was sent to the Board via email on June 12, 2014).

**IX. TOCDF Update.**

Thomas Ball, Engineer, Hazardous Waste Section, provided a power point presentation on the status of the Tooele Chemical Agent Demilitarization Facility (TOCDF). (A copy of the presentation is available with the meeting minutes.)

**X. Other Business.**

- A. Misc. Information Item – None to Report**
- B. Scheduling of next meeting**

The July Board meeting was cancelled. The next meeting is scheduled for August 14, 2014 at 1:30 p.m. in the UDEQ Conference Room #1015.

**XI. Adjourn.**

The meeting adjourned at 3:10 p.m.